

AREA PLAN COMMISSION OF TIPPECANOE COUNTY

MINUTES OF A PUBLIC HEARING

DATESeptember 18, 2002
 TIME7:00 P.M.
 PLACE.....County Office Building
 20 N. 3RD Street
 Lafayette, IN 47901

MEMBERS PRESENT

Jack Rhoda
 Jan Mills
 KD Benson
 Karl Rutherford
 Steve Schreckengast
 Stuart Boehning
 James Miller
 David Williams
 Kathy Vernon
 John Knochel
 Jeff Kessler
 Miriam Osborn

MEMBERS ABSENT

Mike Harris
 Mark Hermodson
 Laura Peterson

STAFF PRESENT

James Hawley
 Sallie Fahey
 Bernard Gulker
 Heather Prough
 Bob Bauman, Atty.

The Area Plan Commission of Tippecanoe County Public Hearing was held on the 18st day of September 2002, at 7:00 P.M., pursuant to notice given and agenda posted as provided by law.

President Jack Rhoda called the meeting to order.

I. BRIEFING SESSION

James Hawley informed the Commission of the need for continuance on **Z-2083—JEFF WALKER (A TO I3)**, **Z-2085—BLACK & BLACK PROPERTIES LIMITED PARTNERSHIP (A TO I1)**, and **Z-2090—RBT DEVELOPMENT, LLC (R3 TO NB)** to the October 16, 2002 meeting.

He notified the Commission that petitioner for **Z-2084—BEACHWOOD, LLC BY JOHN B. SCHEUMANN, MEMBER (I3 TO R3)** has amended the request to I3 TO R2 and a revised staff report has been supplied.

II. APPROVAL OF MINUTES

Stuart Boehning moved to approve the minutes of the August 21, 2002 public hearing. Kathy Vernon seconded.

KD Benson pointed out that the individual votes were not listed for the **Z-2074—DOROTHY M. BOLLOCK (R1 TO R2)** case. She asked the staff if that was a new procedure or an omission.

James Hawley stated that it was an omission, and would be corrected.

Jack Rhoda instructed the secretary to make the correction before the minutes are finalized.

The motion was carried by voice vote.

III. **NEW BUSINESS**

No new business

IV. **PUBLIC HEARING**

Jack Rhoda read the meeting procedures.

Stuart Boehning moved that the Comprehensive Plan for Tippecanoe County, the Unified Zoning Ordinance of Tippecanoe County, and the Unified Subdivision Ordinance of Tippecanoe County, Indiana, are hereby entered by reference into the public record of each agenda item. Kathy Vernon seconded and the motion carried by voice vote.

A. **REZONING ACTIVITIES**

Stuart Boehning moved to continue **Z-2083—JEFF WALKER (A TO I3), Z-2085—BLACK & BLACK PROPERTIES LIMITED PARTNERSHIP (A TO I1),** and **Z-2090—RBT DEVELOPMENT, LLC (R3 TO NB)** to the October 16, 2002 Area Plan Commission meeting. Kathy Vernon seconded and the motion was carried by voice vote.

1. **Z-2082—BRIAN SCAGGS (AW TO A):** Petitioner is requesting the rezoning of 1 acre located on the north side of SR 38 East, ¼ mile west of CR 800 E, at 7720 SR 38 East, Sheffield 4 (SE) 22-3.

Stuart Boehning moved to hear and approve the above-described request.
Kathy Vernon seconded the motion.

Bernard Gulker read staff comments, with recommendation for denial.

Bernard Gulker read into the record a letter in opposition from Lorna Denham, 7814 State Road 38 East, Lafayette, IN 47905. He presented a picture, which was included with the letter.

Steve Schreckengast asked who submitted the picture.

Bernard Gulker replied that the picture was included with Lorna Denham's letter.

James Hawley presented slides of the zoning map and aerial photo and reiterated staff's recommendation of denial.

KD Benson asked James Hawley to point out the Wildcat Creek on the aerial photo.

Steve Schreckengast asked what the property was currently being used for.

James Hawley referred that question to the petitioner and reiterated recommendation of denial.

Joseph T. Bumbleburg, representing the petitioner, PO Box 1535 Lafayette, IN 47902, stated that the Brian Scaggs was present and available to answer any questions. He presented a picture to the Commission. He pointed out that neither the picture he presented, nor the picture Lorna Denham submitted, showed the excessive vehicles that Lorna Denham mentioned in her letter. He stated that this property has been used as a business since 1965. He told the Commission that the reason Brian Scaggs was requesting a rezone was to help facilitate the process of obtaining a small business loan. He explained that Brian Scaggs' business was a very small, minor machine shop manufacturing and repair. He declared there were not any auto repairs involved with this business. He said that the majority of Brian Scaggs clientele came from fax and email, which decreases the number of visitors to the property. He stated that Brian Scaggs occasionally employs between 1 and 2 people. He stressed that this business serves the needs of the community. He said that the property has ample parking space and there is no impact on traffic. He informed the Commission that this request was the prelude to a special exception request. He stated that the septic system of this building was ahead of its time and could certainly handle this business. He pointed out that Brian Scaggs was a good citizen, was following all procedures necessary, and cooperating with the Area Plan staff. He referenced recent Ordinance Committee discussions on home business and pointed out that this was a classic example. He explained that requesting a rezone to A and then applying for a special exception, was the least intrusive way to do this. He stated that there would be no harm to the spotty residential areas. He said that this would be a better use than the junkyards across the street. He asked for approval.

Paul Winstead, 254 Washington Street, Dayton, IN, stated that the Scaggs family has been very good for the town of Dayton. He said that he is familiar with the types of machines and work that Brian Scaggs does and plans to do. He pointed out that it would be in the best interest of Dayton to have a business on this site, if the town was ever going to annex. He stated that there

might even be some tax revenue to clean up the salvage yards across the street.

Karl Rutherford asked for further clarification on the type of work being done at this site.

Brian Scaggs, 7720 State Road 38 East, elaborated on the type of work that is done at his shop. He stated most of the work is done on computerized vertical machining centers. He said occasionally he uses a welding machine or cutting torch. He stressed that he does not use a plasma or laser torch. He stated all work is done strictly inside behind close doors. He told the Commission that he makes frequent trips to manufacture's in Chicago to obtain business.

Jack Rhoda asked Brian Scaggs if he spoke to any residents around him.

Brian Scaggs stated yes. He said that he spoke to Mrs. Denham's husband Phil, last week and Mr. Denham was not opposed to the business. He listed four other families that are adjacent to him and said there was no opposition from any of them. He pointed out that there were no letters in favor or in opposition.

KD Benson asked from what view the pictures were taken.

Brian Scaggs stated they were taken from the front view, which is State Road 38.

Jack Rhoda expressed his concern that Brian Scaggs requested return of the picture he submitted.

James Hawley stated that the picture would be returned to Brian Scaggs after thirty days.

John Knochel asked why this facility was not grandfathered in, since it has always been a shop.

James Hawley stated that if it is non-conforming it is restricted in its ability to make repairs and changes. He said there is no evidence that has been presented that this is an existing non-conforming use that has been in continuous use since 1965.

Joseph T. Bumbleburg stated that kind of proof could be made to the satisfaction of the Commission, but not to the Small Business Administration. He pointed out that the Small Business Administration would require a letter from the Area Plan staff, and Area Plan does not have the data to accomplish that. He stated that it is difficult to explain non-conforming to a lending officer. He explained that if all of the requests were approved, the Area Plan staff would be able to write a letter stating that it is zoned properly and conforming.

The Commission voted by ballot 11 yes – 1 no to recommend approval of **Z-2082—BRIAN SCAGGS (AW TO A)** to the County Commissioners.

Yes Votes

Jack Rhoda

KD Benson

Karl Rutherford

Steve Schreckengast

Stuart Boehning

David Williams

Miriam Osborn

Jeff Kessler

John Knochel

James Miller

Kathy Vernon

No Votes

Jan Mills

2. Z-2084—BEACHWOOD, LLC BY JOHN B. SCHEUMANN, MEMBER (I3 TO R2):

Petitioner is requesting the rezoning of 62.37 acres located north of CR 350S and west of Concord Road, Lafayette, Wea 10 (NW) 22-4.

Stuart Boehning moved to hear and approve the above-described request.
Kathy Vernon seconded.

Stuart Boehning notified the President, that he needed to excuse himself from hearing this case.

Jack Rhoda requested that the record show that Stuart Boehning has removed himself from the room.

Stuart Boehning left the room.

Bernard Gulker read an amended staff report with recommendation for approval.

James Hawley presented slides of the site map and aerial photos.

Joseph T. Bumbleburg, representing the petitioner, stated that Derrin Sorenson, who also represented the petitioner, was present. He said that this is a transitional request. He stated that the petitioner is not in the industrial development business, but in residential development. He explained that this request was being made at this time because the property is currently up for sale. He stated that since the property needed to be purchased now, they need some kind of reasonable assurance of proper zoning configuration. He said that the petitioner is not planning for a classic R2 development. He stated that they have communicated to the Area Plan staff that they are ultimately hoping for a Planned Development. He referenced Derrin Sorenson's reputation of quality work from previous projects and assured the Commission that he was true to his word. He reiterated that in order to purchase the property now, the zoning had to be accomplished for future projects. He agreed with staff's report. He pointed out that the client has gone to great lengths to acquire the third entrance in order to provide three entrances.

Jack Rhoda asked for confirmation that the reason the request was for R2 and not PD was timing.

Joseph T. Bumbleburg confirmed that was the reason.

The Commission voted by ballot 11 yes – 0 no to recommend approval of **Z-2084—BEACHWOOD, LLC BY JOHN B. SCHEUMANN, MEMBER (I3 TO R2)**: to the Lafayette City Council.

Stuart Boehning returned to the room.

3. **Z-2091—MARY LYNNE HARMON (R1 TO RE):** Petitioner is requesting the rezoning of 4.76 acres in order to permit a two-lot rural estate subdivision on property located at 1 Castellan Drive, south of CR 200 N, Perry 18 (NW) 23-3.

Stuart Boehning moved to hear and approve the above-described request. Kathy Vernon seconded.

Bernard Gulker read the staff report with recommendation for approval.

James Hawley presented slides of the site map, aerial photo, location map and sketch plan. He reiterated recommendation of approval.

John Knochel asked for some clarification on the aerial photo.

James Hawley pointed out the private drives versus the public roads.

KD Benson asked for clarification on the one lot that is being mowed.

James Hawley stated that it met the qualification of 50%, with the south half wooded. He reiterated recommendation of approval.

Pat Cunningham, Vester and Associates, representing petitioner, 309 Columbia Street, Suite 101, Lafayette, IN 47901, presented the map to the Commission. He stated that the Mr. and Mrs. Harmon were present. He agreed with staff's report. He pointed out the vacant area in the aerial photo. He mentioned that the community in question, King's Ridge, is very nice higher end homes. He pointed out that the narrow section of the road was private, concrete and very nice. He said that the vacant area that is currently being mowed would be put to its highest and best use, if the request were approved. He stated that this would allow them the opportunity to create a nother nice high end home that would be an asset to the community. He asked for approval.

Joe Farrell, 4 Castellan Drive, Lafayette, IN, stated he lived on one of the lots on the previously mentioned private drive. He pointed out that further division of existing parcels was not contemplated by staff or the Plan Commission

when developing the rural estate ordinance. He agreed that Mr. and Mrs. Harmon have done a nice job. He said while their property meets the ordinance as currently planned; he questions whether or not it meets the intention of the ordinance. He stated his main concern was establishing another property off of a private drive. He pointed out that Castellan Drive services the rest of the subdivision, while the private drive services five houses. He said that if this request were approved, it would open the door for approval for three more lots. He pointed out that the way the ordinance is written three other owners could also subdivide. He mentioned that staff had requested that the zoning signs be relocated because it was so far back on the private drive. He requested that the issue be tabled pending reconsideration of whether or not this was an appropriate use of the new ordinance.

Pat Cunningham stated that if this request were approved, it would cause more individuals to be involved in the maintenance of the private drive. In essence this would lessen the maintenance requirements for adjoining landowners. He reiterated that this is the highest and best use for this land.

Karl Rutherford asked Pat Cunningham to elaborate on the size of the existing drive and if there were plans to upgrade it.

Pat Cunningham stated that the drive was concrete and approximately sixteen feet wide. He said that the turnaround was going to be upgraded because it is specifically located on the actual property, and the requirement is for the private drive to be twenty feet wide.

Steve Schreckengast pointed out several members of the Ordinance Committee that have been working on the rural estate ordinance for a year and a half. He stated his view on the purpose of the ordinance was to allow the creation of building sites, in an organized manner, in the right location. He said that this particular site was an infill in an existing development, and rural estate is the proper process for that. He stated that if a concrete truck can go down the private drive, then there should not be a public safety issue for an emergency vehicle. He reiterated that this was a good way to create a building site in the right location.

Karl Rutherford stated that this situation is an example of the issue under the best of circumstances. He said that this issue could lead to bad examples in which the road would not be up to RE standards. He said that he was in support of this particular request, but believes the Ordinance Committee still needs to develop guidelines for access to RE roads, so that the bad examples do not become issues.

Jack Rhoda stated he wanted to revisit Joe Farrell's request. He asked if it would be in the best interest to table the decision until the Ordinance Committee addresses a new stipulation to the policy of RE roads.

Steve Schreckengast stated he did not think that was in the best interest.

KD Benson stated that would take too long.

Jack Rhoda directed the question to the Area Plan staff.

James Hawley stated that the outstanding issues the Ordinance Committee is addressing are only possibilities at this time. He said that this subdivision is properly filed and deserves a vote. He stated that tabling the discussion would postpone the vote only by a little, and would not lead to a conclusion in a timely manner.

Karl Rutherford reminded the Commission that staff has already favorably recommended the request.

Jack Rhoda stated he understood, but wanted to give Joe Farrell's request it's due.

Bob Bauman stated that a rezone is not a matter of right. He said that normally when a planning decision is applied for, the operative rules are those at the time a proper application is made. He clarified that tabling it, pending a change to the rules, is an issue of concern.

Jan Mills stated that this is not a poorly done private drive and it would be wrong to table it at this point. She reiterated that this situation was not one for concern.

KD Benson agreed with Jan Mills. She asked if the private drive is maintained by a homeowners association.

Pat Cunningham stated that the residents who live on the private drive all share the maintenance, but there is no formal association.

KD Benson asked for clarification that Joe Farrell's concern was that the new owner would not get to participate.

Pat Cunningham stated that it has not yet been discussed with Mr. and Mrs. Harmon. He said that his firm would recommend to them that there be a stipulation that went with the land which would require the new owners to participate in the maintenance.

KD Benson asked Joe Farrell if that would help alleviate some of his concerns.

Joe Farrell stated that he has not measured the private drive but has doubts that it is sixteen feet wide. He expressed his belief that it is closer to twelve feet. He pointed out that two cars could not pass without going into the grass. He reiterated that the road is concrete and nicely done. He confirmed that the homeowners chip in for some of the maintenance. He informed the Commission that the bank dug an easement in order to lay drainage tile, and

that it was poorly done. He said that one of the homeowners went ahead and filled it in with concrete. He mentioned that the private drive bordered three of the lots, but was not sure if there was a formal agreement of maintenance. He voiced his concern that if the homeowners share maintenance, who is responsible for damage to the private drive, if the damage is a result of the new owners' new home.

Jack Rhoda asked staff to confirm the actual size of the road.

James Hawley stated his educated guess was just barely twelve feet wide.

Pat Cunningham informed the Commission that he did not take actual measurements, and was going according to the opinion of Mr. and Mrs. Harmon. He yielded to James Hawley's educated guess.

Jack Rhoda asked who was liable if emergency vehicles could not access the road.

Bob Bauman stated he did not think the Commission was liable.

Steve Schreckengast pointed out that since this a private road it will probably be plowed before a public road, especially being a secondary road.

James Hawley commented that this was a good example of what Robert Mucker was talking about at last month's Ordinance Committee meeting. He said that the rezone predisposes the subdivision because one is based on the other. In the subdivision process there is little or no discretion. The only discretion is at the rezone stage. Even one that perfectly meets the standards, might not be one that the Commission is willing to approve. An example would be if it was the third or fourth in an area, or the existing road system was already over-burdened.

The Commission voted by ballot 12 yes – 0 no to recommend approval of **Z-2091—MARY LYNNE HARMON (R1 TO RE)** to the County Commissioners.

Jack Rhoda informed Joe Farrell that the case would be heard again in front of the County Commissioners.

B. SUBDIVISIONS

1. **S-3189—HUNTINGTON FARMS SUBDIVISION, PH. 3 & 4 (MAJOR-PRELIMINARY):** Petitioner is seeking primary approval for a 90-lot single-family subdivision on 39.78 acres. The site is located between Lindberg Road and SR 26 W, just west of the existing Huntington Farms subdivision, in Wabash 15 (NW) 23-5.
CONTINUED FROM THE AUGUST MEETING.

Stuart Boehning moved to hear and vote on the above-described request. Kathy Vernon seconded.

Bernard Gulker pointed out that there is no request for bonding. He read staff report with recommendation of conditional primary approval.

James Hawley presented slides of location map, aerial photo and plat. He reiterated staff's recommendation for conditional primary approval.

Brian Sullivan, representing the petitioner, 3500 DePauw Avenue, Suite 1055, Indianapolis, IN 46268, stated that the petitioner was present. He informed the Commission of petitioner's intent to request bonding of improvements prior to final platting. He addressed staff's recommendations for construction plans, platting and covenants. He stated that the construction plan review process was underway for the first section and conditions are being addressed. The utility coordination is underway for the entire site and all the final plat recommendations will be addressed.

Jack Rhoda clarified that there is now a request for bonding.

The Commission voted by ballot 12 yes – 0 no to grant conditional primary approval on **S-3189—HUNTINGTON FARMS SUBDIVISION, PH. 3 & 4 (MAJOR-PRELIMINARY)** and 12 yes - 0 no to permit bonding.

V. ADMINISTRATIVE MATTERS

James Hawley requested permission to use funds of approximately \$55, to obtain Notary Public status for the Executive Secretary.

Karl Rutherford moved to approve funding. Jan Mills seconded. The motion was carried by voice vote.

Jeff Kessler asked for further elaboration on use of the funds.

James Hawley explained that when the State Board of Accounts audits the accounting books, they also audit minutes of the meetings, to assure permission has been granted for fund usage. He clarified that normally the Commission approves the budget and funds are spent within that resource. The Notary Public is a fee or dues that is not a normal expenditure. He informed the Commission that there is one other Notary on staff, but she is not present all day, hence a backup is needed.

VI. APPROVAL OF THE AUGUST 2002 EXECUTIVE COMMITTEE AGENDA

Stuart Boehning moved that the October 2, 2002 Executive Committee Agenda be approved as submitted. Kathy Vernon seconded and the motion was carried by voice vote.

Stuart Boehning moved that the following subdivision petition be placed on the October 2, 2002 Area Plan Commission Executive Committee Agenda at petitioners' request, placement thereon being without reference to compliance or non-compliance with the adopted subdivision ordinance:

S-3214 – NORSHO MINOR SUBDIVISION (MINOR-SKETCH)

Kathy Vernon seconded and motion was carried by voice vote.

VII. DETERMINATION OF VARIANCES

A. Area Board of Zoning Appeals

Stuart Boehning moved that the following requests for variance from the Unified Zoning Ordinance are not requests for use variance, prohibited from consideration by ordinance and statute:

BZA – 1616 WEST LAFAYETTE COMMUNITY SCHOOL CORPORATION.
BZA – 1626 CROWN COMMUNICATIONS, INC BY DAVE GILMAN.

Kathy Vernon seconded and motion was carried by voice vote

Karl Rutherford asked if BZA-1626 required a motion for special exception.

Sallie Fahey stated that there is a separate case for Crown Communication that is specifically for the special exception.

VIII. DIRECTOR'S REPORT

James Hawley reported that there have been 125 parcelization requests filed this year. He informed the Commission that this is the highest year ever. He stated that staff is processing and evaluating them as fast as possible. He told the Commission that it has been very time consuming for the staff.

Steve Schreckengast asked for clarification on the deadline for filing and completion.

James Hawley stated that they have to be completely filed without error by September 30, 2002.

Sallie Fahey stated that in efforts to assure as many as possible are completed; staff is reviewing for completeness rather than doing complete reviews.

James Hawley informed the Commission that there has been one request for extension of the deadline. He pointed out that the Commissioners' Ordinance was passed two months ago hence there is no extension process.

IX. CITIZENS' COMMENTS AND GRIEVANCES

None

X. ADJOURNMENT

Stuart Boehning moved that the meeting be adjourned. Kathy Vernon seconded and the motion carried by voice vote.

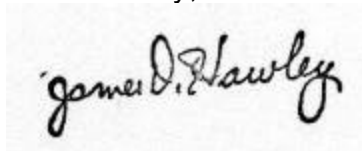
The meeting was adjourned at 8:10 P.M.

Respectfully submitted,



Michelle D'Andrea
Recording Secretary

Reviewed by,



James D. Hawley, AICP
Executive Director